

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

STACEY W. BRACKENS,
Plaintiff,

vs.

Case No. 05-2083-JTM

USA CREDIT, INC.,
Defendant.

MEMORANDUM AND ORDER

There are three motions before the court in this action by pro se plaintiff Stacey Brackens. First, Brackens seeks default judgment against defendant USA Credit, Inc. (Dkt. No. 8). Second, Brackens has filed a Motion to Proceed (Dkt. No. 7). Finally, after an interval in which Brackens sought and obtained an order directing a second service on USA Credit, Brackens has filed a Motion to Reinstate. (Dkt. No. 12).

There are discrepancies in the record as to whether service has ever been perfected. According to Brackens' default motion, he submitted a copy of the complaint to the defendant by mail, that the complaint was initially taken, but then returned, with the package bearing a notation that the company was not at this address. Much of Brackens' story depends on the single or multiple hearsay statements of the letter carrier and the supposed recipient of the package. In support of his motion, Brackens has submitted only his own unsigned affidavit, and has not supplied any affidavit from the letter carrier.

The record also contains a letter dated July 8, 2005, from the chambers of Magistrate Judge O'Hara, noting that Brackens had called that chambers that day, leaving a voice mail message which chambers interpreted as "requesting advice on how to proceed, as you have received information that service failed at the address you provided for defendants." The Magistrate Judge's letter informed Brackens that it was unable to give such advice.

The original motion for default judgment fails to establish that service of process was accomplished, and indeed subsequent communications indicate that service was unsuccessful and would be re-attempted in the future. The court will deny both the July 14, 2005 Motion for Default and the Motion to Proceed.

On July 29, 2005, as noted earlier, summons was reissued at the direction of the Magistrate Judge, with service on USA Credit being directed by the Clerk of the Court to "One Millennium Drive, Uniontown, PA, 15401." This address is the registered address for USA Credit held by the Pennsylvania Secretary of State. *See* <http://www.dos.state.pa.us/corps/site/default.asp>.

Plaintiff Brackens' July 14, 2005 Motions to Proceed and for Default (Dkt. Nos. 7, 8) are hereby denied. Plaintiff Brackens' Motion to Reinstate (Dkt. No. 12) is construed as a new motion for default judgment. Defendant USA Credit shall show cause on or before September 19, 2005, why default judgment should not be entered against it. The Clerk of the Court shall cause a copy of this order to be mailed to the defendant at the address set forth above.

IT IS SO ORDERED this 30th day of August, 2005.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE